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OUR JUDICIAL SYSTEM.

(*Continued from p.* 10.)

Having referred to certain anomalous features of the present system the lines on which a reform may proceed may be indicated. This aspect may be dealt with under three heads:—(1) CONSTITUTION OF ONE TYPE OF COURT WITH UNLIMITED JURISDICTION IN POINT OF VALUE OR SUBJECT-MATTER, (2) CONSTITUTION OF A NEW MODEL OF APPELLATE COURTS, AND (3) THE ABOLITION OF THE ORIGINAL SIDE OF THE HIGH COURT.

I.

The idea of a gradation of Courts with limitations on their jurisdiction as to subject-matter or value was unknown to English Law before the constitution of the County Courts. The latter which having been brought into existence in 1840 have come down to modern times do not, however, correspond to the Courts in India subordinate to the High Court. Now as ever before it is the King's Bench Division or the Chancery Division or the Probate, etc., Division of the High Court that functions as the main jurisdiction of first instance, and the County Court has seisin only of relatively small disputes which it would inconvenience the suitor to take all the way to London. They correspond more or less to our Courts of Small Causes. As already mentioned Indian conditions render it impossible for the High Court to take up the Original Side of the provincial litigation and make it imperative that the district organisation must be complete and self-sufficient so far as regards the jurisdiction of first instance. Within the district there has

to be a net-work of smaller Courts to deal with the smaller litigation, but heavier litigation need not be divided between two sets of Courts. Under the new Civil Courts Act, there may be more than one Judge for the same Court and this principle can be carried out further than it has been. One Superior Court of Original Jurisdiction manned by as many Judges as may be required for adequately meeting the volume of business would appear to be sufficient for a whole district. The time has come for the devolution of further power to the District Munsif and not much hardship will be caused in asking the big suitor to come to the District centre in these days of extended railway communication and cheap motor transport. Or the Circuit system may be introduced and the Judge may be asked to proceed from place to place and try causes locally so as to enable witnesses to avoid journeys. The administrative control will be with the senior Judge, who will always sit at headquarters, so as to be always available for emergent work. It is also desirable that summary matters like applications under the Guardian and Lunacy Acts, the Local Boards Act and the Religious Endowments Act are dealt with by the senior Judges. The other Judges will dispose of suits, land acquisition cases, probate matters, matrimonial matters and in short all matters involving trial or inquiry.

In the matter of the delimitation of pecuniary jurisdiction for the Court of the District Munsif some differentiation should be made between money claims and other disputes or if that distinction should be deemed untenable something should be done to see that the real value of the suit is taken into consideration for the ascertainment of the forum and not merely a rule of thumb value. Valuation for purposes of Court-fees should be entirely differentiated from valuation for jurisdiction. The latter must correspond to the actual stakes of the litigation, that is, what it would cost to the party to fail should his case be true. If such a differentiation be fully carried out one can confidently recommend the raising of the District Munsif's jurisdiction to Rs. 5,000. Having regard to the fall of the rupee, the limit of Rs. 5,000 is much the same in point of real values as the limit of Rs. 2,500 fixed in 1873. If anything, the purchasing power of Rs. 5,000 now is less than the purchasing power of Rs. 2,500 in 1873. The cadre of District Munsifs will certainly have to be strengthened to meet the additional work but the relief to the Superior Court will afford more than ample compensation.

II.

On the Appellate Side the District organisation requires a complete readjustment. The Civil Justice Committee suggested the idea of District Benches for hearing appeals, but they did not go far enough and the recommendations of the Committee made in this behalf do not appear to have received any serious consideration. The practice of single Judges hearing and disposing of appeals is a peculiar feature of the Indian judicial system and has been current long enough if not too long. Without disparagement to the high character and the great ability of our mofussal Appellate Judges, the system is essentially indefensible. The Court of first instance pronounces judgment after an elaborate trial during the course of which in the majority of cases the testimony of a number of witnesses is actually heard. It is obvious that the trial may afford side-lights on points to which evidence is directed, and these side-lights which are not available to the Appellate Court may have an essential bearing on the final result of the appreciation of the evidence. There is seldom a case, where some probabilities or circumstances are not forthcoming on both sides and the question in each case is which set of probabilities or circumstances should be given a determining weight and which set explained away. Without wounding susceptibilities one may be pardoned for stating that in a substantial proportion of cases in our Courts conflicting evidence is brought forward on both sides on points in which one set or other must necessarily be false. The sanctity of the oath or the witness box is a sorrowful irony at present. No two minds think exactly alike and the same circumstance appeals to different minds with different degrees of force. These considerations make it difficult for us to feel that the appreciation of a case by one mind is necessarily to be preferred to the appreciation by another for the mere accident of its situation. No doubt the Appellate Judge is supposed to have greater experience, but even this hypothesis does not hold in many cases as attempted to be shown earlier, and in any event the extent of the difference in experience between Original and Appellate Judges in the mofussal is not very great and cannot possibly suffice as a foundation for the present edifice. The County Courts in England dispose of comparatively trivial business, but appeals against their judgments are heard by two or three Judges of the King's Bench Division. Only in cases of *quasi*-judicial work like that of the Master or Referee the appeal is heard by single Judge. In all matters determined judicially by

a Judge the practice of a single Appellate Judge is unknown in England. Appellate work is difficult and delicate firstly, because rights of parties which it might have taken hours, days or weeks for the first Court to try and determine have to be settled in as many minutes, hours or days and secondly, because the only guide to a correct determination is the cold record as against the living voice and action of the parties and witnesses concerned in the drama of the trial. Our judicial officers no doubt are as high-souled and conscientious as any body of Judges elsewhere, but there is a difference between conscious prepossession or unconscious prepossession or impulse and no human being however high can altogether avoid the latter. It is obvious that the effect of an infirmity in temper or judgment is far more damaging to the cause of justice in the short and sharp investigation which an appeal can receive than in the elaborate hearing received by an original suit. All these criticisms may also be levelled against a Bench, but their force necessarily weakens. Two persons cannot be subject to the same infirmity operating in the same manner and generally each member of the Bench exerts a steadying influence on the other. If they are not able to see eye to eye on all the points but nevertheless reach the same conclusion, the confidence in the correctness of the conclusion is the greater because it has emerged out of two independent lines of investigation. If both of them agree as to the reasons and on the conclusion there is the satisfaction that the agreement is due to the correctness of their views. When the Bench disagree on the conclusion there is the solution suggested by section 98, Civil Procedure Code, based on the principle that where as much can be stated for upsetting as for confirming the decision, it should be left as it is.

The Civil Justice Committee have suggested the constitution of benches as a means of reducing second appeals. With great respect the question of District Benches for hearing appeals is entirely independent of the question of controlling the file of the High Court or reducing second appeals. Whether second appeals should be permitted on litigation of small value has to be discussed on its own merits. The idea of the Civil Justice Committee is that a strong Court of first appeal may well be made a Court of final appeal and their proposal is to constitute benches as Courts of final appeal for suits of the value of less than Rs. 1,000. Apparently according to them the existence of second appeals is a sufficient measure of protection against erroneous decisions by single Appellate Judges in all cases

above Rs. 1,000 in value. But this line of reasoning ignores the fact that first Appellate Courts finally decide questions of fact and the High Court is powerless to set right an erroneous finding of fact. Again in various interlocutory matters only one appeal is allowed and some of these matters either finally dispose of rights of parties or are otherwise of grave importance and it is obviously desirable that a strong Court of Appeal disposes of such matters. After all in the majority of cases findings of fact conclude the ultimate issue of the litigation. Apart from these on first principles a Court of Appeal should have an inherent claim to a status which compels its recognition as a reliable means of testing the proceedings of the first Court. It would thus appear that the expediency of the constitution of Benches has to be considered by itself and apart from the question of the reduction of second appeals.

The District Appellate Jurisdiction is now limited to Rs. 5,000 and one result is that litigation of the value of above Rs. 5,000 and below Rs. 10,000 has to be content with a first appeal to the High Court. On the constitution of the Benches the appellate jurisdiction may be safely raised to Rs. 10,000 and this step will have the effect of giving the system greater uniformity. Claims under Rs. 10,000 will be dealt with by the High Court on second appeal and claims over Rs. 10,000 will have the benefit of a second appeal to the Privy Council. Raising downward limit of first appeals to Rs. 10,000 will materially reduce the file of the High Court but second appeals over judgments rendered by District Benches would have to be disposed of by Benches of the High Court and not by single Judges. After all it is a difficult question to decide which system involve greater work, whether the former practice of Benches deciding second appeals finally or the present one of single Judges deciding them and their decisions coming up before a Bench by Letters Patent Appeal even with the limitations introduced by the amended Letters Patent. It is only in few cases relatively that an arguable point of law arises and when one does arise it is desirable to have it decided by a Bench. The admission of a second appeal carries with it a recognition that there is a point of law which admits of argument.

One other suggestion may be permitted to be made here. The settled practice of the Privy Council is to leave concurrent findings of fact undisturbed and to investigate points of fact where the Indian Courts have differed. This provision in

the Civil Procedure Code as to second appeals should be amended so as to permit of a second appeal on facts where the Appellate Court has reversed the first Court. This will, no doubt, throw some greater strain on the High Court but there is the advantage that second appeals from concurring judgments will diminish and those only will be admitted which clearly involve a doubtful point of law on the findings. An alteration of the present practice in the direction indicated would give greater force to the recommendation of the Committee to abolish second appeals in suits of under Rs. 1,000 in value and even otherwise some inferior limit has to be fixed for second appeals. The present Civil Procedure Code cuts off the right of second appeals from suits of a small cause nature of less than Rs. 500 in value. Some kind of differentiation between money suits and title suits has to be made and the limits for each category fixed separately. The Provincial Sub-Court is now trying many claims up to Rs. 1,000 as small causes and the second appeal limit for money claims may well be fixed at Rs. 1,000. The Rs. 1,000 limit is by itself a fair limit even in respect of other kinds of litigation, but the difficulty consists in making sure of the real value of the suit. The whole question of the valuation of suits for purposes of jurisdiction has to be fully considered and placed on a logical and practical basis. A judicial system such as ours which depends on values pre-supposes a perfect set of rules determining values and cannot be satisfactorily organised without them. It is a question of finding formulas such as would suit all types of litigation and a comprehensive and elaborate examination of the whole question is necessary.

Granted that District Benches should be constituted to hear first appeals below the value of Rs. 10,000, the details of the scheme may be worked out easily. Two Judges are of the rank of the present District Judge and another of the rank of the present Subordinate Judge, or two Senior Subordinate Judges will answer quite well. The Bench may be located at the District Headquarters without any serious hardship to clients because there is no question of attendance of witnesses. Under modern conditions there are plenty of transport facilities between District Headquarters and up-country stations and the public have become accustomed to undertake trips to and from headquarters for business purposes. The Appellate Court does not require any separate process or copyist establishment. The record of the whole district will be in the custody of the Principal Civil Court and the Principal Civil Judge will

retain administrative control of all the Courts save the Appellate Court which will be subordinate only to the High Court. A scheme such as has been sketched above does not appear to present many targets for attack, apart from financial considerations. A layman cannot be expected to deal with the latter, but if a scheme of reform is good in itself the financial problems connected with its introduction must and will be solved in time.

III.

The only thing that remains to consider is the question of the Original Side of the High Court. The present writer has no hesitation in believing that the ordinary function of an Indian High Court lies in appeal, Reference and Revision. There may occur special situations requiring an original trial being held by the High Court but the extraordinary original jurisdiction which the High Court has at present will suffice to meet such emergencies. The exceptional powers possessed by the High Court by way of issuing writs of *Habeas Corpus,* Certiorari or Mandamus or of dealing with points of law arising on cases stated by authorities statutorily empowered in this behalf like the Income-tax Commissioner should also be available as incidental to a Superior Court of Record. But apart from these cases it is difficult to see why the small area covered by the Presidency-town cannot be parcelled out into four or five Munsifis for suits of Rs. 3,000 and under in value and into two or three judicial districts for all other litigations. The District Appellate Bench should be constituted for the area of the Presidency-town also. There do not appear to be any insuperable barriers in the way of bringing the Original Side into conformity with the condition of things in the mofussal. It may be said that commercial causes dominate in the Original Side and require a special kind of experience. There are at least half a dozen inland towns in India whose commercial importance is growing every day and if the district judiciary are good enough for commercial causes arising in such towns it is difficult to see how they will not do for the commercial litigation of the Presidency-town. Even on the criminal side a state of the law that requires a learned Judge of the highest Court to sit and try a pick-pocket stealing a fountain pen in the Moore Market leaves much to be desired. With the advent of the District Benches mofussal administration is bound to command increasing confidence and the enlightened citizens of Madras are not likely to oppose a measure of reform. The

High Court will be relieved of a substantial proportion of its volume of work and can devote greater time to appellate business. It will combine the features of the English Court of Appeal and those of the House of Lords. It would be a Court of second and ultimate appeal in respect of causes under Rs. 10,000 and a Court of first and intermediate appeal in respect of causes over Rs. 10,000 and in respect of the latter the ultimate appeal will lie to the Privy Council.

A word has to be said in respect of Insolvency Jurisdiction and Small Cause Jurisdiction. The present system of assigning these jurisdictions to Sub-Courts whose legitimate work is taken to lie in the disposal of original suits precludes the possibility of these matters receiving their due attention. Insolvency work is becoming increasingly important and raises questions of gravity and intricacy. As for small causes the two circumstances first, that they are summarily tried and secondly, that the decision is not subject to appeal make it the more essential that they should be tried with care. The limit of jurisdiction has now been extended in many instances to Rs. 1,000 and it often happens that the subject-matter of a Small Cause suit represents the whole fortune of the suitor. It is desirable that Courts of exclusive Small Cause Jurisdiction and Courts of exclusive insolvency jurisdiction are constituted for suitable areas. The Court of Appeal may hear appeals from the decisions of the Insolvency Court also, and a further appeal to the High Court may be limited to cases where the Appellate Court grants leave to appeal.

It is not the object of this article to present an exhaustive and detailed discussion of the points touched. Certain new points have been indicated so as to provoke discussion. Judicial reform is a matter of serious moment and while it should not be undertaken lightly or rashly it should not be indefinitely put off. The time has come for a thorough overhaul and a consideration of the questions raised cannot be dismissed as premature. This article would have more than justified itself if it draws the attention of thoughtful leaders of the profession and the authorities to the points raised and set them thinking with a view to the evolution of a better system.

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SUMMARY OF ENGLISH CASES.

MANCHESTER CORPORATION *v.* FARNWORTH, (1930) A.C. 171 (H.L.).

Corporation—Nuisance—Generating station for electricity—Fumes emitted therefrom—Negligence—If statute exempts the Corporation from liability to damage.

By the Manchester Corporation Act, 1914, the Corporation was empowered to erect a generating station on certain lands in a rural district a considerable distance from the city and to construct electric lines from the generator to the city. The generating station was erected and work begun. The plaintiff, a contiguous farmer, brought the action for abatement of nuisance caused by the sulphurous fumes emitted from the chimneys of the generating station. The plaintiff contended that the 1914 Act was a 'special Act, within the meaning of S. 1 of the Electric Lighting (Clauses) Act, 1899, which by S. 81 of the Schedule made the undertakers liable for any nuisance that may be caused and that further the defendants cannot rely on the authority of Parliament to cause damage.

Held, by Viscount Sumner and Lord Blanesburgh, that the Manchester Corporation Act, 1914, was not a special Act within the meaning of S. 1 of the Act of 1899 as the 1914 Act does not authorise the supply of electricity 'within any area' but only the erection of a generating station to supply electricity along with other existing stations.

Per Viscount Dunedin DISSENTING.—"To suppose a generating station which was not also a station of supply would be an absurdity. There is a special provision as to where the current gathered is to be sent, to where the electric wires are to go and within which city the supply is to be made and, therefore, the 1914 Act is a special Act as it 'authorises' the supply of electricity for any public or private purposes within any area."

On the second point, *held,* that "when Parliament has authorised a certain thing to be made or done in a certain place, there can be no action for nuisance caused by the making or doing of that thing, if the nuisance is the inevitable result of the making or doing so authorised. The onus of proving that the result is inevitable is on those who wish to escape liability for nuisance, but the criterion of inevitability is not what is theoretically possible, but what is possible according to the state of scientific knowledge at the time . . . . and practical feasibility in view of situation and of expense". But as the Corpo-

ration was indifferent in planning the station and took no skilled advice as to the effect it would have on the neighbourhood, they were liable for the nuisance.

HERBERT CLAYTON AND JACK WALLER, LTD. *v.* OLIVER, (1930) A.C. 209 (H.L.).

Damages—Contract—Agreement to engage an actor to play a leading part in a comedy—Engagement offered but of a minor part—Refusal to play the part—Actor, if entitled to damages—Measure of damages—Loss of publicity if can be considered.

A certain theatrical producer agreed to engage the respondent an actor for 6 weeks certain to play one of the three leading parts in a musical play intended to be produced. The actor in turn was prohibited from acting elsewhere during the period of the engagement. The actor was offered a minor part which he declined and sued the producer for damages for breach of contract.

Held, that if the contract is a mere engagement of the respondent's services, then the wages lost may be the true measure of damage and the circumstances associated with the termination of the contract cannot be used to increase that sum. But where the contract is to provide a part for the respondent 'to play one of the three leading comedy parts', it is more than a mere contract to render service. An opportunity for such service is contemplated and agreed to be furnished. 'Both parties knew that as flowing from the contract the plaintiff would be billed and advertised as appearing at the Hippodrome, and in the theatrical profession this is a valuable right' and the jury was competent to consider this circumstance in assessing the damages.

Marbe v. *George Edwardes* (*Daly's Theatre*), *Ltd.*, (1928) 1 K.B. 269, was rightly decided.

Fechter v. *Montgomery*, (1863) 33 Beav. 22, followed.

INLAND REVENUE COMMISSIONERS *v.* MILLER, (1930) A.C. 222 (H.L.).

Income-tax—Right of residence by will of a house—If property assessable to income-tax—Measure of—Duty of trustees to recoup the occupier, if alters liability.

By his trust, disposition and settlement, a husband directed trustees to hold and retain his lands and estates in Manderston and out of the income of his estate generally to make certain payments and in particular all public, parochial and local burdens and to allow his wife, the respondent, to occupy and possess during her lifetime his mansion-house with the effects therein free of rent or taxes. The widow so occupied the house and the question was if she was liable to be assessed to super-tax on a sum representing the annual value of the house and effects. The trustees were empowered to enter the house for purposes of repair or making additions to the furniture and such other purposes. The Lord President held that the trustees were the real occupants and had the right to occupy and use them for every possible purpose and that the widow's was only a privilege of personal residence therein.

Held, that the widow's interest under the will was a right to occupy, which the trustees would be compelled by the Court to recognise. A right to enter is not a right to occupy. The widow is the person to be taxed and the measure of the tax is the annual value of the house and it cannot avail her to say that she does not receive any money in respect thereof.

The fact that under the will, the trustees are to recoup her out of their general fund makes no difference. The liability to the Crown is really her liability.

M'Dougal (or *Inland Revenue*) v. *Sutherland*, (1894) 3 Tax Cas. 261 and *Inland Revenue Commissioners* v. *Wemyss*, (1924) 8 Tax Cas. 551, disapproved.

Corke (or *Inland Revenue*) v. *Fry*, (1895) 3 Tax Cas. 335, right in the result, but wrong so far as it made the power to let, the rigid exclusive test of liability.

BOUZOUROU *v.* THE OTTOMAN BANK, (1930) A.C. 271 (J.C.).

Master and Servant—Dismissal from service—Transfer of servant from one place to another—Refusal by servant to go—No personal risk involved by going there, though inconvenient—If good ground to refuse.

The appellant was employed by the respondent bank as he was one of the successful candidates at a competitive examination held by the Bank. The Bank had branches in several places. The appellant was transferred from the branch at *S*

to the branch at *M*, a town in the Asiatic provinces of Turkey but he refused to go on two grounds: (*i*) that *M* was not within the contractual ambit of his employment, and (*ii*) that the order was unreasonable and justified his refusal as he did not know Turkish and the Turkish civil authorities were hostile to him. The Bank thereupon dismissed him from service.

Held, that from the nature of the service it is difficult to assume that the Bank would willingly agree that their employees should not be bound to serve outside the place where the contract was made except with their consent and such a condition of the contract would require to be clearly established. In the absence of a suggestion that the transfer to *M* involved any personal danger to the servant by violence or disease, the order cannot be held to be unlawful and the disobedience of such a lawful order justified the dismissal from service.

Turner v. *Mason*, 14 M. & W. 112, approved.

THE OTTOMAN BANK v. CHAKARIAN, (1930) A.C. 277 (J.C.).

Master and Servant—Servant requesting a transfer on ground of danger to life—Request not granted—Servant fleeing away—Dismissal of servant—If legal—Damages—Measure of.

The respondent was in the permanent employment of the Bank. He was temporarily sent to Constantinople branch to serve there but as his life was in danger in Constantinople from the Turkish authorities, he requested to be transferred outside Turkey and on refusal fled from Constantinople. He was thereupon dismissed from service. The Bank also contended that the respondent had incurred a permanent disability which disabled him from performing his part of the contract.

Held, that the risk of personal danger which caused the respondent's flight was real and justified from the point of his personal safety and that he was not therefore bound to obey the Bank's order to stay at Constantinople. The contentions of the Bank must be tested as at the time of dismissal and as the disability was not then a permanent one, and as there was no suggestion of impossibility of compliance with the respondent's request to move him to a safer place, the contract did not become impossible of performance by the time of dismissal and the breach was therefore all on the side of the Bank.

LORD STRICKLAND *v.* GIUSEPPE GRIMA, (1930) A.C. 285.

Appeal—Judgment of a tribunal for determining election disputes—High Court of Malta constituted Tribunal by Letters Patent—If an appeal lies to Privy Council.

By Letters Patent of His Majesty for Malta it was ordained that "all questions which may arise as to the right of any person to be or to remain a member of the Senate or the Legislative Assembly shall be referred to and decided by the Court of Appeal in Malta". The election of two of the appellants to be members of the Senate of Malta as representatives there of the Trade Union Council of the island was declared null and void by the Court of Appeal and an appeal was preferred against it to the Privy Council, who originally gave special leave to appeal.

Held, that no appeal lay. His Majesty had advisedly designed his Court of Appeal in Malta to be a Special Tribunal to finally determine all these questions. Decisions on such matters are not decisions of mere ordinary civil rights. The jurisdiction is special and "of a character that ought as soon as possible to become conclusive, in order that the constitution of the Assembly may be distinctly and speedily known". Also "it concerns what, according to British ideas, are normally the rights and privileges of the Assembly itself, always jealously maintained and guarded in complete independence of the Crown so far as they properly exist."

Theberge v. *Laudry,* (1876) 2 A.C. 102, followed.

ATTORNEY-GENERAL *v.* GUARDIANS OF THE POOR LAW UNION OF TYNEMOUTH, (1930) 1 Ch. 616.

Poor Law—Unemployment due to general coal strike—Guardians of the Poor—Relief to miners by way of loans from the Guardians—Repayment by instalments—Guardians' resolution to release all the debtors as a body—If ultra vires*—Reasonable exercise of discretion—What is.*

By way of relief to the miners who were out of employment by reason of the general coal strike in 1926, the defendants, a Board of Guardians of the Poor, advanced loans to the families of the miners and other workmen on the condition that the loans should be repaid by the head of each borrowing household in weekly instalments by deductions from the weekly wages, the payment to commence from five weeks after they resumed work. Several had repaid the loans, some were not

required to pay because of their low wages and the others were regularly paying their instalments. The Local Government Act, 1929, became law and under it the Board would cease to function from March 31, 1930, and the right to recover the loans advanced to persons resident within Tynemouth County would vest in the relators. In July, 1929, the defendant Board passed a general resolution excusing and cancelling the balance of loans outstanding as from 15th July, 1929.

In an action by the relators for a declaration that such a resolution was *ultra vires*, *held*, that the Legislature only empowered the Guardians to treat as a loan the relief which may be given outright in accordance with the regulations and that does not clothe them with all the attributes and rights of the lender under the ordinary contract of loan between individuals. They stand in a fiduciary position to those whose monies are used by them and though they may have power to do such acts as can fairly be regarded as incidental to or consequential upon the statutory power of relieving by way of a loan, they cannot assert a right to release the whole outstanding debt and to make each debtor a present of the amount still due from him without any regard to his individual capacity to re-pay.

Even if it be assumed they have such a general discretion to release the debtors, it must be exercised reasonably. The discretion does not mean that they can do what they like because they are minded to do so but must be such as they ought to do after using their reason and ascertaining the proper course to be followed. It cannot be a proper exercise of discretion to consider solely the interest of the debtors without any enquiry into the ability of all or any of the debtors to repay.

PYTRAM, LIMITED *v.* MODELS (LEICESTER), LIMITED, (1930) 1 Ch. 639.

Copyright—Wolf cub's head—Design capable of registration under the Act, but not registered—Whether copyright exists—Works of sculpture.

The plaintiff company carrying on business as modellers and sculptors prepared and supplied to a Boy Scouts Association *papier-mache* models of a wolf cub's head. The defendants copied out the same model and supplied to their customers a number of replicas of the plaintiff's model. In an action for infringement of the copyright of the plaintiffs in their original model, *viz.*, the wolf cub's head,

Held, the copyright was infringed by the defendants, the plaintiff's model having been deliberately copied. But as the model in the case comes within the definition of 'design' in the Patents and Designs Act, 1919, it is capable of being registered under the Act and not having been so registered, there can be no copyright in it. The model was not the defendants' and they made no inquiries as to whose the model was and specifically abstained from making any inquiry and as such it cannot be pleaded that they had no reasonable cause to suspect that the copyright subsisted in the work.

In re BUXTON. BUXTON *v.* BUXTON, (1930) 1 Ch. 648.

Will—Contingent specific legacy—Accretions to legacy before happening of contingency—If accrues to legatees.

A testator bequeathed to his son and grandson one-third and two-thirds of his ordinary £35 shares in a company, but the legacies were to take effect on the death of his wife. After the testator's death and during the wife's lifetime, the company resolved (*i*) to capitalise a part of its reserve fund and consolidate the original £35 share with a new £15 share, thereby making the new share one of £50, and (*ii*) to issue some £10 preferred ordinary shares.

Held, the legacies were contingent but there is no difference between the rule which applies to capital accretions to a vested legacy and capital accretions to a contingent legacy. There being no gift of capital accretions to any one else, the legatee became entitled to the shares as improved.

Observations in *Guthrie* v. *Walrond,* (1883) 22 Ch. D. 573 at 578 to the contrary not followed as *obiter.*

In re, MILLS. MILLS *v.* LAWRENCE, (1930) 1 Ch. 654.

Will—Testamentary power of appointment—Executor to use his discretion in the selection of the object—Executor to take in default of or until appointment—Release of power by the executor—If valid—Power appendant or appurtenant.

A testator by his will, directed the accumulation of the income of his residuary estate in a particular manner for 21 years from his death and in the events that happened, the trust fund and the accumulations from its income should be held in trust by his brother and another for the benefit of all or any one of a specified class of persons, the brother to appoint

by deed the beneficiary. Meanwhile and unless and until the power of appointment was exercised, the brother was to be the beneficiary absolutely. In 1928, the brother exercised the power in favour of some person retaining by the same deed of appointment a power to revoke the appointment. By a later deed he revoked the appointment and released the trust fund from the power to the intent that the power should be absolutely extinguished.

Held, (reversing the decision of Eve, J.), that the power of appointment was not in the nature of a trust or one coupled with a duty of the nature of a trust but only appendant or appurtenant. There was a trust in favour of the brother in default of and until he made an appointment and having regard to the definite terms of the trust, no trust can be spelled out for the benefit of the members of the class nor is there any fetter placed on the donee of the power to prevent him from releasing the power.

FLEXMAN *v.* CORBETT, (1930) 1 Ch. 672.

Specific performance—Contract to buy a leasehold—Unusual and onerous covenants—If disentitles one to specific performance.

By an agreement, the defendant agreed to purchase from the plaintiff the residue of a leasehold house for £800. The agreement was in the form of a letter signed by the defendant agreeing to abide by the terms of the original lease and stating that the defendant understood "that the ground floor and basement is let to a tenant who is holding over as a yearly tenant and who is paying £60 per annum and that vacant possession will be given to me on completion of the house." The original lease contained various covenants by the lessee to do outside painting, to deliver up, to keep in repair, to insure, not to allow building without lessor's consent, not to carry on offensive trades, and to produce assignments; and it also contained a proviso for re-entry upon non-performance of the covenants. The tenant holding over was represented to be a desirable man, but it later was found that he was unsatisfactory and was in arrears of rent. The original lease was not produced or shown to the defendant. The purchaser repudiated the contract.

In an action for return of the deposit and rescission of the contract,

Held, what are onerous terms is a question of fact in each case. The terms of the original lease were unusual and onerous. It is not usual to find covenants like that except in cases where large estates were leased out. A purchaser of a lease is not bound to complete the contract if the lease is subject to onerous covenants or to an onerous provision of an unusual character unless, before the agreement was made, he had a fair opportunity of ascertaining for himself the terms of such covenant or subsequently there was a waiver of such objection.

The defendant cannot be deemed to have waived the right to plead the onerousness of the covenants from the mere delay in replying to the reminders of the plaintiff's solicitors.

GHOUGH'S GARAGES, LIMITED *v.* PUGSLEY, (1930) 1 K.B. 615: 143 L.T. 38.

Landlord and Tenant—Company, a tenant—Statutory right to new lease—Landlord and Tenant Act, 1927, S. 5—County Court Rules requiring a form of notice—If intra vires*—Receiver by debenture-holders—If can take action on behalf of the company after its liquidation.*

Under S. 5 of the Landlord and Tenant Act, 1927, a tenant of a holding to which the Act applied could apply for renewal of his lease in certain circumstances. A company was the lessee of certain premises, the lease expiring by June, 1930. The company issued debentures in 1925 by which it charged all its property to secure the money due to the debenture-holders. It also provided that at any time after the moneys became payable under it, the holders might appoint a receiver with power to take "possession of, collect and get in the property charged by the debenture and for that purpose to take any proceedings in the name of the company. . . . . ." In 1929 a receiver was appointed by the debenture-holders and he filed an action in the name of the company for a new lease of the holding. Later the company was ordered to be wound up by the High Court and the questions were (*i*) if after the winding up order, the receiver could continue the action, and (*ii*) if the notice to grant a lease not having been in a 'prescribed form' as required by the County Court rules was good.

Held, the right to take proceedings is just as much a security for the debt as any other rights given by the debenture. It is 'property' and to deprive the debenture-holders of the right to realise a valuable right of the company, because

the company has gone into liquidation, is to nullify one of the valuable rights given to the receiver under the debenture.

S. 5 only requires that the tenant should allege and prove that he has sent to the landlord a notice requiring a new lease and the County Court rule requiring it to be in a prescribed manner does not thereby merely regulate the procedure of the County Court but adds a condition to S. 5 and is *ultra vires.*

BLAY *v.* POLLARD AND MORRIS, (1930) 1 K.B. 628.

Contract—Oral agreement—Written agreement adding a term to it—One of the parties signing with practically no consideration of its terms—Fraud, not pleaded—Non est factum *plea—Contract, if can be rectified.*

Two young men *A* and *B*, who were carrying on a garage as partners agreed on 4-3-1929 orally to dissolve the partnership as from that date, *B* agreeing to take over all liabilities incurred after that date. *A* informed his father, a solicitor about it and he drafted a written agreement embodying the oral terms and added a further term that *B* was liable to indemnify *A* in respect of all arrears of rent. *B* read it and signed but as it was couched in technical language did not understand its implications fully. In an action by *A* to be indemnified as per that term, *B* pleaded (*i*) *non est factum*, and (*ii*) mistake on his part. Fraud was not alleged on *A's* part nor was rectification of the contract pleaded.

Held, B having executed the document knowing it to be an agreement dealing with the rights of the two partners on dissolution of the partnership, he cannot be heard to plead *non est factum* merely because he would have objected to one of its terms if he had understood it. At the most one term differs from *B's* intention but there is no misunderstanding as to the nature of the document itself. Where one party reduces to written terms a bargain that has been made, and inserts in it a stipulation which *he knows the other* party did not intend to promise, he may not be entitled to take advantage of that mistake of the other party. But that rule will not apply where there is no evidence that *A* knew the other party's mistake. Further, where the insertion is not made by *A*, the party to the contract but by the solicitor, there must be a finding that *A* connived at it.

STURLEY *v.* POWELL, (1930) 1 K.B. 677.

Statute—Construction—Merchant Shipping Act, 1894, *S.* 60 *—Remuneration of fisherman—Share of proceeds of the catches of fish—Absence of an express provision in the Shipping Act excluding Civil Court's jurisdiction—If the jurisdiction can be impliedly negatived.*

In many cases the fisherman's agreement provides for remuneration by a share in the fishing catch but as a boat may come with a very poor catch in one trip or with a large catch in another, it was agreed that whenever the catch fell short of 3*l*., the owners should advance such amount as may be necessary to make up 3*l*. Such sums were advanced and in an action for recovery of those moneys, the defendant pleaded that the Civil Court had no jurisdiction, as the question related to wages within the meaning of S. 387 of the Merchant Shipping Act and that the claim must have been preferred before a Superintendent of the Board of Trade thereunder.

Held, that there is a strong presumption that the jurisdiction which a Court had before the passing of an Act is not excluded by the Act without clear words of exclusion in the Act. This is really a claim for money lent by the plaintiffs to the defendant and not wages and therefore the section did not apply. But even if the section did apply, there was nothing to prevent proceedings started in the County Court from being perfectly valid. The question as to what would happen if the Superintendent was inquiring into the dispute and at the same time an action to determine it was proceeding in the Court left open.

BARRATT *v.* RICHARDSON AND CRESSWELL, (1930) 1 K.B. 686.

Limitation—Landlord and tenant—Right to re-enter when rent "in arrear for 21 *days"—Failure to pay rent for over* 12 *years—If suit for possession barred.*

Under an indenture of lease for 99 years, the defendant got into possession of certain premises and it was provided in the lease deed that rent should be payable on the usual quarter days and if and when any part of the rent should be in arrear for 21 days, whether it should have been legally demanded or not, it should be lawful for the lessor to re-enter on the premises. Rent was in arrear from 1914 and in 1924 the lessee assigned

the lease to the defendant. In an action by the lessor instituted in 1928 for possession,

Held, the right of re-entry arose afresh each time any part of the rent fell in arrear for 21 days. The breach of covenant is a separate breach on each such occasion and a new right of re-entry occurs each time. The right to rent at each stipulated period continues as long as the relation of landlord and tenant exists, though arrears beyond a certain period may cease to be recoverable. It would be curious to hold that the right to rent should continue but the right of re-entry should cease.

Doe d. Mannion v. *Bingham*, 3 Ir. L. Rep. 456, not followed.

The defendant deposited the arrears of rent for six years and claimed relief under S. 212 of the Common Law Procedure Act, 1852, under which the Court can relieve against forfeiture "when all the rent and arrears together with the costs" are paid.

Held, S. 212 does not speak of arrears due from the defendant personally but all arrears due from the covenantor under the lease. The arrears referred to in S. 212 is the arrears of rent that could be recovered in a personal action against the covenantor (assignor).

Analogy of Dingle v. *Coppen*, (1899) 1 Ch. 726, applied.

REX *v.* SCOFFIN, (1930) 1 K.B. 741.

Criminal Law—Commitment to Assizes for sentence—Accused below 21 years of age at date of commitment but above 21 at date of sentence—If can be sentenced to detention in Borstal institution.

An accused was summarily tried and convicted by the Petty Sessions of larceny but as he was then below 21 years, he was sent to the Assizes for sentence under S. 10, Criminal Justice Administration Act, which provided that "if it appears to the Court that the offender *is* of such age as aforesaid", *i.e.*, not less than 16 nor more than 21 years of age, it may order him to be detained in a Borstal institution. By the date of the sentence by the Court of Assizes, the offender passed his 21.

Held that the age referred to is the age at the date of sentence by the Assizes as under the Act the Petty Sessions could not send an offender to Borstal. The word used is "is" and not "was".

FOWLER *v.* COMMERCIAL TIMBER COMPANY, LTD., (1930) 2 K.B. 1.

Contract—Company—Employment as managing director for five years—Voluntary liquidation—Plaintiff voting for liquidation—Employment stopped—Company if liable for damages.

A company agreed to employ the plaintiff as managing director for a period of 5 years and a quarter at a fixed salary but within the period, the company went into voluntary liquidation, the plaintiff himself having voted for liquidation. The liquidators in winding up terminated his services. The question was if the plaintiff having consented to the liquidation could complain of repudiation of the agreement and claim damages. There was nothing in the contract as to what should happen to the agreement on liquidation and the winding up resolution would have been passed whether the plaintiff assented to it or not.

Held, a term in a contract is only implied if it is such an obvious term that if the parties had thought of it they must have agreed to it. As a director he was bound to have the interest of the company before him and if in its interests he votes for its liquidation, it cannot be implied that he intended to give up his claim to damages, if as a result of the liquidation, the company puts an end to the employment of the managing director.

H. S. WRIGHT AND WEBB *v.* ANNANDALE, (1930) 2 K.B. 8.

Solicitor—Divorce suits by and against husband—Costs of wife—Stray acts of misconduct of wife—Solicitors ignorant of same—Liability of husband to wife's solicitors for costs.

The plaintiffs, solicitors, acted for the wife in proceedings by and against the husband for divorce, the husband's petition alleging acts of adultery by his wife before the plaintiffs began to act on her behalf. In a common law action by the solicitors for their costs,

Held, that the common law allows a wife who is living apart and who has been refused maintenance, to pledge the husband's credit for "necessaries" and in the term "necessaries" is included the power of the wife to instruct a solicitor to defend her from proceedings taken against her by her husband, to appear for her in proceedings taken against her husband by her, etc. This right is founded on the theory of her being an agent of

the husband and just as an agent who has been guilty of an act in breach of the contract of agency—*e.g.*, taking a bribe from the other party—forfeits his right to make any claim upon the principal, so also a wife who is unchaste determines her right to pledge the husband's credit. This exception to the general right of the wife to pledge the husband's credit applies even when there has been an isolated act of adultery (committed prior to her pledging the credit) and the solicitor did not know of it. There is no difference for this purpose whether the wife was defending herself or attacking the husband.

JOTTINGS AND CUTTINGS.

The Lord Chancellor's Programme.—There was once a famous novelist and he wrote a book called *Great Expectations.* Perhaps the title will not inaptly serve for the Lord Chancellor's speech at the dinner given to the Judges at the Mansion House on Friday of last week. But there is a difference. In Charles Dickens's book the expectations were not realised, though, as with all good novels, the story had a very pretty ending. Lord Sankey's expectations are no doubt going to be realised, and the only question is, when? On County Court Judges an ever-increasing burden of new work and responsibility is thrown—the third reading of the Housing Bill has been made the occasion for an amendment which adds to the tale—and they are to get an increase of salary. But not yet, the time is not propitious. The Crown Proceedings Bill is going to be taken up some day. But not yet. The liability in contract is plain sailing, but tort is a different matter. So the Government Departments have blocked the Bill. That at least is our reading of Lord Sankey's statement that opinion is divided as to the inclusion of torts. The New Despotism Committee has been appointed and it is going to report. That date, of course, the Lord Chancellor cannot control. Nor need there be any surprise that he is cautious as to making any promises about the reform of procedure, though we gather that he proposes to refer the matter to a mixed committee of business men and lawyers. We hope we are not unduly critical. The powers of even a Lord Chancellor to carry out his good intentions are severely conditioned by circumstances. But all that is possible in realising Great Expectations we doubt not Lord Sankey will do.—*L.J.*, 1930, p. 17.

The Needless Costs of Litigation.—The Scottish appeal just referred to was solely concerned with question of procedure, and is a striking example of the legal difficulties which seem to have become inseparable from workmen's compensation cases. When the scheme was first introduced it was to be so simple that the lawyer would not be wanted, but the result has been very different, and workmen's compensation law has been painfully built up, at the expense of litigants. The matter, in its more general aspect, is the subject of an interesting article in the current *Fortnightly Review*—"Plain Tales from the Law Courts," by "Benthamite." The writer regards the decline in litigation as being due to its excessive cost, not so much in the cost of the actual decision as in the cost of incidental or interlocutory arguments and decisions which are useful for perfecting the procedure, but with which the litigants themselves have no concern. Of course, substantial questions of law are also decided in this way, and when the result is reached, then, as "Benthamite" observes, the parties "get what they sought and, if the decisions in their cases become recognised precedents, perhaps they should be grateful for their fame." But the point of his criticism is that the litigants' money is "spent profusely in obtaining a decision on some point of judicial procedure which is utterly meaningless to them and which they never wanted." For lawyers the examples which are given in the article are not required. Every practitioner is familiar with the waste of money over futile questions of procedure. For mere waste of money, the litigation under the Rent Restrictions Acts stands pre-eminent. And Benthamite, ending where we started, adds "A study of the evolution of our law of Workmen's Compensation would be very interesting in this connection."—*L.J.*, 1930, p. 18.

A Reformer's Remedies.—Benthamite's stories of the ineptitude of legal procedure, however entertaining, would be useless if he had not remedies to suggest. At present, he says, where interesting or new points of law or procedure are involved, our system does not bother much about the question whether the stakes at issue are worth the cost of litigation. "A dispute about a few pounds may end up in the House of Lords with a bill of costs of several thousand pounds. So long as the final decision is sound in law, our Courts are content, even if the loser has to pay an amount for legal expenses that is out of all proportion to the amount of the stakes." And the remedies are aimed at the simplification both of substantive law and of procedure. As to substantive law he would have more

codification and more scientific drafting of statutes. That is the task of the Legislature, and there is the preliminary question how to get the Legislature to do its work properly. And gaps and uncertainties in the law he would refer to a legal tribunal which would solve them without throwing the expense on litigants. The suggestion is interesting, but probably impracticable. As to procedure, he would restore Lord Selbourne's policy in the Judicature Act of 1873, and allow only one appeal. That, of course, would reduce expense and give litigants a quicker result, though we should miss the judgments in the House of Lords on which our case law is mainly founded. And Benthamite would simplify legal proceedings by stopping the preliminary skirmishings. This last is the best of his suggestions, and would go far to reduce the costs of administering justice. This, he says, and probably with truth, is far more costly than in any country save the United States.—*L.J.*, 1930, p. 19.

The Minister and the Judge.—It is a notable fact that when the Divisional Court recently considered the question as to whether a certain order of the Minister of Health was *ultra vires* and invalid, the Lord Chief Justice held that the order in question was *intra vires* and valid: and he gave a reasoned and admirable judgment. Swift, J., alone of a Bench of three Judges, held that it was essential to the validity of the Order that it should be preceded by fulfilment of the steps or stages prescribed in the Act under which it purported to have been made. Swift, J., delivered a forceful judgment and uttered strong words of and concerning the new despotism.

And now the Court of Appeal, consisting of Scrutton, Greer, and Slesser, L.JJ., have unanimously preferred the conclusions of Swift, J., to those of the majority in the Divisional Court. But there is still the House of Lords.

The author of the "New Despotism" is no lover of bureaucratic legislation and the powers which in many matters place a Minister above the law, and his judgment in this case reveals that his judgments are in no wise affected by his dislike of the result to which they lead.—*L.J.*, 1930, p. 269.

The Shortage of Judges in France.—The French Chamber is engaged in the discussion of a bill for judicial re-organisation, which will probably involve the re-establishment of many of the local tribunals abolished a few years ago.

Several proposals have been made for dealing with the shortage of suitable candidates for the posts of Magistrates and Judges, who in France are not appointed from among members of the Bar but from a separate hierarchy. The shortage is no doubt largely due to the smallness of salaries, which had not been changed between 1883 and the date of the war, and although slightly increased in 1919, remain on a level which puts that of a Judge of the first class at the equivalent of only *225l.* a year, and that of a Judge of Appeal at only *385l.*

These salaries are now to be increased, although the Government refused to pledge itself to multiply 1914 salaries by five and thus put them on a level with the depreciation of the franc. The Chamber obeyed by defeating the proposal.

Two suggestions were made for increasing the available personnel of Judges, but both were rejected by the Chamber. One was to adopt a system of one Judge in each Court instead of three as at present. The other was to allow women to become Magistrates and Judges.

Those in favour of the latter suggestion pointed out that women are judges in America, and that in France, although they do not have the suffrage, they have been allowed to be called to the Bar for thirty years. They can also be Professors of Law, and can thus train magistrates.

Moreover, the anomalous position exists that in certain circumstances the presiding judge may call upon the senior advocate present to fill a temporary vacancy on the Bench, but may not do so if she is a woman.—*The Observer.*—*L.J.*, 1930, p. 274.

The Cost of Litigation.—Considerable public attention has been given lately to the Report of the Parliamentary and Commercial Law Committee of the London Chamber of Commerce on the Expense of Litigation, which has been adopted by the Council of that body and has been sent to the Lord Chancellor, the Bar Council, and the Law Society. Having regard to the source from which it comes, the Report deserves and will, no doubt, receive the careful consideration of all the interests concerned. We cannot attempt to deal with it adequately in this column, and we propose to consider it more at length in the course of the next week or two; but it states very clearly the problem to be faced, and makes a number of practical sugges-

tions for dealing with the position. There is no doubt but that public opinion will demand some measure of reform in the near future which will make High Court litigation less expensive to the litigant; and it is by no means impossible that this Report may result in a move in that direction being made. The matter is one of much difficulty, and proposed changes will require to be very carefully considered; but the Report in question suggests a number of methods by which the cost of litigation could be sensibly reduced without impairing the efficiency of our judicial system, and any unobjectionable changes of procedure which would have that result would be very welcome.—*L.J.*, 1930, p. 292.

A Soviet Marriage.—The Court of Appeal (*Times*, 16th inst.) has reversed the decision last December of Hill, J., in *Nachimson* v. *Nachimson* (46 T.L.R. 166), that the Divorce Court has no jurisdiction in respect of a Russian marriage under Soviet law, since such a marriage is not a marriage at all. He relied on the definition of marriage by Lord Penzance in *Hyde* v. *Hyde* (L.R. 1 P. & D. 130) as "the voluntary union for life of one man and one woman to the exclusion of all others." The State, indeed, may dissolve the marriage, put an end to the status, and discharge the parties from the obligations of the contract; but under Soviet law either party can dissolve the marriage at will, and in Mr. Justice Hill's view, this was inconsistent with the voluntary life-long union which is the essence of marriage. But the Court of Appeal regard the mode of termination of the marriage as irrelevant to the question of its original validity. If in its inception it was valid by the law of the country where it was made, that is enough, and the marriage is treated as valid here, provided at least the local law does not permit polygamy. How it may be terminated is a different matter, and does not affect the existence of the marriage until it is terminated. Hence the Court of Appeal were unanimous in holding that the marriage, being when it was made a valid Russian marriage, must be recognised as valid here. *Prima facie* there is much to be said for Mr. Justice Hill's view that if a polygamous marriage is excluded, a marriage dissoluble at the will of either party must also be excluded. Each is opposed to the idea of Christian marriage. But the polygamous marriage is bad at the start. The Soviet marriage is good to begin with, and may, in fact, not be terminated except by death. Analogies may be found in other branches of the law. A

revocable voluntary settlement, for instance, is an effective disposition of the property until revoked, and the Revenue authorities require the usual stamp to be paid on it.—*L.J.*, 1930, p. 346.

Discretion in Divorce.—In commenting recently (*ante*, p. 345) on the judgment of Lord Merrivale in *Apted* v. *Apted* (*Times*, 20th May), we referred to the use by Jeune, P., in *Constandini* v. *Constandini* (1903, P. 246, 259) of the maxim that a wrongdoer ought not to profit by his own wrong as a reason for refusing divorce where the petitioner had contributed to the misconduct of the respondent. We questioned whether a matter of divorce ought to be determined by maxims drawn from other branches of the law. Sir Ellis Hume-Williams, K.C., makes the same point when in a letter to *The Times* of the 23rd May he deprecates the use of the rule, founded, he says, on the Ecclesiastical Law, that a man must come to the Court with clean hands: usually regarded as a rule of Equity, but Equity may have adopted it in early days from an ecclesiastical source. However, Sir Ellis's contention is that the conduct of the parties is not the only consideration in divorce, and the good of the community has to be considered as well as the future of the individuals. Where marriage has been such a complete failure that each party has started a fresh establishment and has been living for years in probably open adultery, is it, he asks, really in the interests of the community to refuse for that reason to dissolve a tie which each has abandoned? Recognising the difficulty that Judges feel in exercising the discretion under section 178 of the Judicature Act, 1925—and we doubt whether, for practical purposes, the difficulty has been reduced by the judgment in *Apted* v. *Apted*—he would revise the section, and he thinks an Act should be passed providing that no petitioner should forfeit his or her right to a divorce on the ground of his or her own adultery unless a Judge should otherwise order. That, no doubt, would facilitate the task of Judges, and tend to uniformity of decision. But the difficulty of passing such an Act would probably be very great. It has not hitherto been found possible even to get Parliament to consider the Majority Report of the late Lord Gorell's Commission.—*L.J.*, 1930, p. 382.

Constructive Contempt in Chancery Proceedings.—Applications for the committal to prison, on the ground of contempt

of Court, of persons alleged to have made or published statements likely to affect the course of justice are naturally almost always made in cases which are for trial by a jury, and it is but rarely that such applications are necessary in Chancery proceedings. But a motion came before Mr. Justice Maugham last week in *H. W. Dillon & Sons, Ltd.* v. *The William Thomas Shipping Co., Ltd.* (*Times,* May 31), by which it was asked that Sir Robert Thomas and the editor of certain Liverpool newspapers should be committed for an alleged contempt. The action was a debenture-holder's action, and a receiver had been appointed by the Court on the ground of jeopardy. Sir Robert Thomas, who was stated to be governing director of a company which managed the business of the defendant company, gave an interview, in the course of which he made certain reflections on the conduct of the plaintiffs in applying for the appointment of a receiver. The only point taken by the respondents was that statements of such a nature could not possibly prejudice the mind of the Chancery Judge before whom the proceedings in the debenture-holders' action might come. This was, of course, true, but it did not, as Mr. Justice Maugham held, prevent what had been done being punishable as a contempt of Court; since if such conduct were permitted, the actions of the parties attacked might be influenced, and other parties might be deterred from approaching the Court; and these considerations applied with particular force to representative actions. The respondents, who apologised for their contempt, were ordered to pay the costs. Although such cases as this are not common, they are not unprecedented. The matter is discussed in Sir John Fox's *Contempt of Court,* p. 115; in *Cann* v. *Cann,* (1754) 2 Ves. San. 520, a woman was committed for publishing, at the defendant's instance, an advertisement relating to an answer put in by the defendant, and in *Littler* v. *Thompson,* (1839) 2 Beav. 129, Lord Langdale, M.R., ordered the editor of a newspaper to pay the costs of a motion in respect of reflections on the plaintiff and his witnesses published before decree.—*L.J.*, 1930, p. 382.

Lord Mansfield and Circumstantial Evidence.—Judges have not at all times extolled the value of circumstantial evidence. For example, there was the case where Lord Mansfield, as Chief Justice, presided over the trial of a Catholic priest who was charged, under an Act of William III, with the crime, then current, of saying Mass. If proved, the offence was punishable

with imprisonment for life. Determined to secure an acquittal, his Lordship explained to the jury that they must not infer either that the prisoner was a priest because he appeared to be saying Mass or that he was really saying Mass because he appeared to be a priest. The jury took the hint and returned a speedy verdict of "not guilty."

Lord Campbell criticised Lord Mansfield for that performance, and likened it to that of a certain Judge of long ago who disapproved strongly of the game laws. It was proved before him that the defendant, being in a field with two dogs and armed with a gun, had fired at a covey of partridges and that two of the said covey had fallen immediately after the discharge of the shot aforesaid. The Judge directed the jury that, in the absence of definite and direct evidence as to the cause of death, it was their duty to assume that the birds had died of fright.—*L.J.*, 1930, p. 392.

The India Report.—The complications of the existing Central and Provincial Governments in India reflect the complications of the political and social conditions on which they are based. India under the rule of a Governor-General and his Council, responsible only to the Secretary of State, and of Provincial Governors responsible only to the Governor-General, was a comparatively simple matter. But when growing native desires called for satisfaction by the participation of Indians, whether Hindus or Moslems, in the Government and in the election of representative bodies, a problem was set which it is still for the future to solve. Towards that solution the Report of the Simon Commission is likely to make a notable contribution. The Government of India Act, 1919, with a Preamble declaring that it was the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, was a definite advance in this direction, but, as regards the Provinces, it introduced the curious system of Dyarchy, under which the functions of Government were divided; some—education, agriculture, public health and public works—being transferred to the Governor acting with Ministers who are responsible to elected Councils; and others—such as police, justice and revenue—being reserved to the Governor acting with a Council, the members of which are appointed by the Crown and must not exceed four in number. The only definite finding in the part of the Report at present issued is that Dyarchy has not been successful. It has not been found possible in practice

to observe this division of functions, and "the underlying and fundamental conception of the dyarchic system—complete responsibility of Ministers in a certain defined field and in that field only—has become hopelessly obscured." The Act of 1919, however, was experimental, and provided for the appointment at the end of 10 years of a Commission to inquire into its working. This appointment was somewhat accelerated, but otherwise the inquiry has been held as intended, though without the general co-operation of representative Indians which was at first anticipated.—*L.J.*, 1930, p. 397.

Mr. Gladstone and the Beauty of the Law.—It would be strange if the fascinating series of extracts from the Gladstone Papers which have been appearing in *The Times* did not contain something of interest to lawyers, and we find it in his ready acceptance of Lord Campbell's theory as to the source of Shakespeare's legal knowledge. The Lord Chancellor had sent him a copy of his book, "Shakespeare's Legal Acquirements," the thesis of which was that the numerous legal terms and legal allusions to be found in the Plays could only have come from one who had had legal experience. "Your facts," wrote Gladstone, in acknowledging the book, "as a whole leave me in a comfortable persuasion on the case as it stands, that our greatest poet was once an attorney's clerk." But Sir Plunket Barton, in his recent "Links between Shakespeare and the Law," which appeared in *The Law Journal,* found nothing more than "a surprising facility in picking up scraps of legal lore and turning them to dramatic account. There is no necessity for inferring that he must have had any training or practice in the profession of the Law" (64 L.J., 159). Apparently Campbell had gone on to enlarge on the beauty of the law, and Gladstone replied: "I quite understand your doctrine that the driest forms of law have their own interest and attraction, almost their own proper beauty"; but he demurred to this attraction in the abstract, and thought that some special connection with the law was required to enable the observer to see its beauty. And just when, to the true lawyer, a rule of law attains its full beauty, Parliament has no further use for it, and so such things as Contingent Remainders, and the Rule in *Shelley's Case,* are now matters of legal history only.—*L.J.*, 1930, p. 398.

Marriage and the Prince of Wales.—The Prince of Wales has long been of age when it is possible for him to marry with-

out the consent of his Parent. No Prince of Wales, being a descendant of His Majesty King George II, says 12 Geo. 3, c. 11, is to be capable of contracting matrimony without the previous consent of the Sovereign signified under the Great Seal and declared in Council; and every marriage celebrated without that consent first had and obtained is to be null and void.

But a proviso adds that should such a descendant, being 25 years of age, persist in his resolution to marry against the wishes of the Sovereign, he may give twelve months' notice to the Privy Council and thereafter lead the lady of his choice to the altar. Such a marriage is to be good, "as if this Act had never been made," unless within the twelve months both Houses of Parliament have expressed their joint and several disapprobation of the union. So Lords and Commons must agree in their disapproval, or the marriage so contracted after such notice is valid.

It may be well to add that there is no reason to suppose that His Royal Highness has asked for permission or been refused it by any of the prescribed authorities.—*L.J.*, 1930, p. 408.

Law and Ethics.—Much is heard in these days of the inclusion in the school curriculum of instruction in elementary law; and it is a suggestion for which there is very much to be said. It is highly desirable that the average man should know something of the general scheme of the law under which he lives and on which he is dependent for the carrying on of everyday existence, and many a heartbreak would be saved were there a more general familiarity with its basic principles. Even of more importance, however, to the cause of good citizenship than a knowledge of the content of the law is a just appreciation of its spirit and function, the ends it is designed to serve and the relations subsisting between it and administration on the one hand, and between it and morality on the other. From this point of view, as well as for its qualities of lucidity and rhetoric, the address of Lord Hewart on Law, Ethics, and Legislation, broadcast on Monday last, is of value, and it is to be hoped that the movement thus initiated will be extended in scope. Every lawyer knows that it is a failure to appreciate the gulf fixed between law and ethics that is at the root of the many gibes that are levelled at the "unfairness" of the law, and with this Lord Hewart dealt with his usual aptness of phrase when he said:

"To turn from law and legislation to ethics is to pass into a different atmosphere and a larger room," and again:

> The moralist may say "Blessed are the pure in heart." But it is inconceivable that a statute should provide, for instance, that "after the passing of this Act any person who is not pure in heart shall be guilty of a misdemeanour." Nor would the matter be made any easier if the statute went on to provide that lack of purity of heart, and its symptoms, should be defined by a government department in rules and orders having the same effect as if they were contained in the Act.

After laying stress on the necessity that laws should keep pace with and not outstrip the moral standard of the community if they were to be effective, the Lord Chief Justice at the close of his speech struck a sterner and more serious note:

> The conclusion, therefore, may well be that, so far as there is a relation between law and ethics, the true function of law is to remove the obstacles which injustice and oppression of any kind put in the way of free development. And it goes without saying that free development means self-control quite as much as self-assertion. Perhaps one of the most potent causes of the present discontent is the tendency to lay stress on rights rather than duties. . . . . Yet the real progress of humanity probably depends far more on the conception of duty than on the conception of rights.

—*L.T.*, 1930, p. 273.

Divorce Facilities.—For divorce as well as local government the 1st April was a fateful date, for it is from that day that jurisdiction in divorce is extended to eight additional assize towns and fifteen district registries are added to those at which proceedings may be commenced. The new arrangements have been anxiously awaited by provincial law societies, to whom they will mean a more even distribution of the Poor Persons burden, and will be welcomed also in the public interest as carrying a step further the process of doing away with the legal disabilities of the poorer subject. Also, as one of the Judges recently acutely observed, a hearing in the neighbourhood of the parties' homes, though possibly unpopular with them on the ground of publicity, is likely to facilitate the not too easy task of that watchdog of morals, the King's Proctor.—*L.T.*, 1930, p. 298.

Slum Clearance.—There is no thoughtful citizen, whatever the colour of his politics, who is not painfully aware of the tremendous obstacle to real social progress the over-crowded and insanitary slums of our big towns present, and there is no one who would not, personal considerations apart, welcome some device for accelerating the slow pace of reform in that direction. For this reason there is bound to be in the House a

general approval of the spirit animating the Government's Housing (No. 2) Bill, as it is called, whatever criticism its detailed provisions may provoke. How may the general body of ratepayers best be encouraged by the State not only to wipe out whole areas of hopeless squalor and to provide healthy and attractive substitutory accommodation for the teeming population turned out, but also to conduct a vigorous campaign against the evils of deterioration and over-crowding wherever in their area they raise their head? The Bill, into the details of which it is not proposed to enter here, contains features designed to secure greater method, expedition, and thoroughness. In the first place, any local authorities putting up proposals for demolishing property must first satisfy themselves that the working class population displaced can be housed in existing houses or that it is possible, financially and otherwise, for the council to provide new accommodation in advance of displacement. Again, whether the scheme be one for complete clearance of a certain area, or for its "improvement" by thinning out and re-arrangement of streets and partial demolition, or merely for the destruction of isolated insanitary houses, State assistance shall no longer be based on the loss estimated to be incurred by the authority, but shall take the form of an annual grant for forty years based on the number of displaced persons for whom they have provided accommodation. Finally—and this is a provision certain to provoke conflict—it shall no longer be obligatory on the authority to purchase and destroy property, the Bill providing that owners may be compelled themselves to clear a given site of buildings within a given short period.—*L.T.*, 1930, p. 298.

Gretna Green Again.—In the case of *Sefton-Toms* v. *Stirling,* disposed of by Mr. Justice Maugham last Saturday, the plaintiff asked for an order that the trustees of her settlement should transfer to her, as the person absolutely entitled, substantial trust funds which she had settled on her first marriage in 1926. The first marriage was an unhappy one, and in March, 1928, there was a decree *nisi* which was made absolute in October of that year. There were no children of the marriage. In November, 1929, the plaintiff executed an appointment of the funds to herself, but a difficulty arose owing to the fact that on September 29, 1929, she went through a form of marriage at Gretna Green. If that marriage was valid, the execution of the appointment was not, as no power existed

during coverture. She had since regularly married her Gretna Green travelling companion. It was proved that the couple left London on the 28th September, arrived at Gretna Green on the 29th, and went straight to the blacksmith's shop. The certificate, which bore a picture of the smithy, was signed, "Richard Rennison, priest." The plaintiff's husband admitted that he had never been in Scotland before the 28th September last, and that he had spent the previous three weeks in London. At the smithy he and his wife had held hands over the anvil. The blacksmith had asked whether they were single and had then told him to put the ring on his wife's finger, and had pronounced them man and wife. They had not been asked whether either of them had been resident in Scotland for the twenty-one days required by the Act of 1856. His Lordship had no difficulty in deciding that the ceremony at Gretna Green was an idle form which did not invalidate or, in any way affect the execution of the power conferred by the settlement, and he accordingly ordered the trustees to transfer the settled funds to the plaintiff subject to the payment of their costs.—*L.T.*, 1930, p. 298.

Scottish Irregular Marriages.—The Scottish marriage laws often strike English lawyers as strange and unexpected, while their details are somewhat difficult to remember.. Irregular marriages in Scotland are contracted (*i*) *per verba de praesenti,* (*ii*) by promise *subsequente copula,* or (*iii*) by "habit and repute." As regards a marriage of the first kind, the consent must, of course, be given by each to each in all seriousness, and when that is so, and the consent is to a present marriage, it constitutes *ipsum matrimonium* even before consummation takes place. When intercourse is claimed as constituting a marriage of the second kind there must have been a definite promise of marriage which has been relied on: mere courting is not sufficient. When habit and repute are put forward as constituting a marriage, the repute must have existed among friends and equals with good opportunities of judging and before whom a man would not be likely to pass off his mistress as his wife, for, as Lord Watson said in the *Dysart Peerage* case, (1881), "when a man takes his mistress with him to an hotel, or goes with her to a shop to buy baby linen, the probability is that he will prefer describing her as his wife to explaining the true position," and, therefore, evidence from such quarters will have no weight. The cohabitation must last for some years and must be in Scotland—not, for instance, in the Isle of Man, as

occurred in one case. Lord Brougham's Act of 1856, referred to in the *Sefton-Toms* case, was passed to check border marriages. It required that one of the parties to a marriage "by declaration, acknowledgment, or ceremony" should have his or her usual place of residence in Scotland, or should have lived there for twenty-one days next preceding the marriage. It does not, it appears, apply to the second and third kind of marriages mentioned above. A "clandestine" marriage in Scotland is one where the religious ceremony "gangs agley" because banns are not duly published or because the celebration is by a "trafficking priest," *i.e.*, a layman who deceives the parties by pretending to be a priest. Such a marriage may be valid as an irregular marriage.—*L.T.*, 1930, p. 299.

No Innocent Man Hanged.—Whether the capital punishment controversy is to be settled by assertion and counter-assertion we are very doubtful. Authoritative statements are put forward by persons of experience both one way and the other, but on some subjects the *ipse dixit* of even the greatest is of little value. Personal temperament counts for too much. It is, too, an age which will not accept a statement without asking why it is made. We are, therefore, glad to see Lord Buckmaster sceptical upon the assertion of the negative, that "no innocent man is ever hanged." It is interesting to observe that in his evidence before the Select Committee now sitting, he used the same line of argument as we adopted in discussing this point (see p. 2 of our issue of 4th January last). It is, perhaps, a coincidence that he uses the same illustrative cases as we did—Slater, Beck and Habron—or may one conclude that our paper is perused by high judicial authority. We advocate no pronounced views upon capital punishment, but we repeat that, if it is essential to the case in its favour that no mistake can possibly be made, then the death penalty stands condemned. In fact both sides can produce solid arguments one way and the other. The "no possible mistake" nonsense is a mere sop to soft-heartedness. The question is one to be settled on the balance of advantage to the community. The personal view of the writer is that there is a slight balance in favour of an experiment in abolition, and he would like to see an Act prohibiting the pronouncing or execution of the death penalty for a period of say five years, the matter thereafter to come up annually in the Expiring Laws Continuance Bill.—*S.J.*, 1930, p. 207.

Induction of Chief Justice Hughes.—American journals have a genius for devising laconic captions for their news paragraphs, and these, although amusing enough, are sometimes apt to strike the English reader as lacking in dignity. Thus, when Archbishop Davidson resigned the Primacy of the English Church the fact was announced in an American journal with the laconic heading "Canterbury Quits," a mode of reference to the aged and dignified cleric which, to say the least, was in doubtful taste. Of course, no offence was intended any more than when more recently an American legal journal headed a paragraph with the somewhat abrupt line: "Hughes takes oath as Chief Justice." But this is a way which Americans have, and of which, although we rarely think of it, we have a counterpart in the time-honoured practice of law reporters in giving merely the surname of counsel who argued a case, unless, indeed, to avoid confusion with another barrister bearing the same patronymic, initials have to be added. Although, however, the American journal docks the new Chief Justice of his Christian names in the heading referred to, it is only fair to add that these are fully given in the body of the paragraph where we are told that the ceremony of his induction was simple but impressive. Mr. Justice Oliver Wendell Holmes, who has been a judge for the long period of forty-eight years, twenty-eight of which have been on the bench of the Supreme Court, and of which he is now the senior member, presided on the occasion, made the announcement of Mr. Taft's resignation—his death occurred shortly afterwards—and the appointment of Mr. Hughes, and then he directed the clerk of the Court to administer the judicial oath to Mr. Hughes. Complying with the usual practice in the Federal Courts, the new Chief Justice raised his right hand, read the oath, and then signed it for the records. The ceremony, it will be observed, closely resembles that of the swearing in of judges of the English High Court. Our Scottish neighbours have a more elaborate procedure, actually requiring the newly appointed judge to go through his trials, first in a Court of first instance, and secondly in the Inner House of the Court of Session. Suggestions have been made for the abolition of this procedure, but so far without result.—*S.J.*, 1930, p. 223.

Human Sterilisation.—It is not realised in this country how far the eugenists have proceeded to carry their theories into effect in some parts of the world. The Hungarian midwife

whom a recent trial showed to have supplied arsenic to wives and mothers burdened with the idle mouths of chronic invalid relatives was but turning to her own advantage the stern economic pressure upon her neighbours, although incidentally she was in some cases furthering the elimination of the congenitally unfit. But elsewhere the State itself assumes the engenic function. In California, between 1910 and 1929, six thousand and fifty-five operations have been performed in public institutions of the State designed to prevent reproduction of the human species. Generally speaking, this practice has been carried on under express statutory provisions definitely aimed at preventing the propagation of mental defectives and other unfit persons, and these statutes have been ruled by the State Courts and the United States Supreme Court to be constitutional. Those performing the operations are relieved by law of civil or criminal liability when acting within the statutes. It is a surprising picture. Control of the individual by the community can be carried to no higher point, and what is truly remarkable, it occurs in a land where personal liberty has been the watchword of the people from their very beginnings. California does not stand alone, though that State heads the list in this matter. How far the object aimed at is being achieved can be but the subject of a guess. The factor of heredity operates oddly, and it may be that by suppressing the unfit, the genius may also be accidentally eliminated. The final outcome of such interference is, in any case, exceedingly likely to differ from the expected.—*S.J.*, 1930, p. 240.

Authors on the Bench.—An eminent practitioner, since deceased, was once heard to say that he read nothing but law. The profundities of the science he certainly knew, but how much he lost by shutting himself off from the great field of humane literature it is impossible to estimate. Happily, many judges whose daily lives are spent in expounding "the lawless science of our law" do not confine their studies within purely professional limits, and every now and again give evidence of their skill in the domain of criticism and appreciation of the great writers of the past. The fine classical learning of the Lord Chief Justice is, as we all know, frequently exhibited in an apt quotation or felicitous phrase, just as his skill in marshalling his facts and presenting them in a lucid arrangement was shown in his recent book on "The New Despotism." Mr. Justice Mackinnon is another member of the Bench whose lite-

rary studies find expression in the careful editing and annotation of some English classic. A specialist not only in commercial law, he is likewise a specialist in all the learning that has gathered round the incomparable Jane Austen, and the "Old Benchers" of Charles Lamb; and these he has now followed up by an admirable edition of Fanny Burney's "Evelina," the novel which on its first appearance took captive such men as Burke, Windham, Gibbon, Reynolds, Sheridan and Johnson, the last named greatly preferring it to the writings of Fielding—an opinion which, however, has scarcely been shared by posterity, excellent though "Evelina" is not only for its story, but for the pictures is affords of contemporary life and manners. In this little book the learned Judge has found a subject to his very heart's content, and his copious annotations, the result of much research, will inspire his readers with not a little of his own enthusiasm.—*S.J.*, 1930, p. 253.

CONTEMPORARY LEGAL LITERATURE.

At a time when the air is surcharged with ideas of reform in law school courses, it is opportune to find the useful and thought-provoking article "Making Lawyers" contributed by Professor John Dickinson of Pennsylvania University to *North Carolina Law Review*, (1930, June Part). It deals with the curriculum in the University of Pennsylvania, but the discussion of the subject is general and of general application. It must be admitted that neither the law school course alone nor mere work in a lawyer's office will be sufficient to equip a man to the bar but a happy combination of both is necessary. The law-apprentice who has not the theoretical training in a law school may get a good training in every-day rules of procedure and evidence and in drafting the familiar types of instruments current in the community in which his master practises. He may also acquire a working ability to search titles, and even prepare pleadings in familiar cases. But, as the Professor says, it is necessarily limited to routine. "His law, in other words, comes to him as a matter of habit rather than of understanding and in consequence he is subject, like all who rely exclusively on habit, to the disadvantage of not being equipped to face other than familiar situations. But now when new branches of law and variety of situations spring up with the changing needs of society, a preliminary legal training is necessary to guide the student and help him to tackle the problems. The task of the lawyer does not stop with merely

picking up the *lex scripta* but he has to develop law through his arguments before courts.

The real quest of the Professor is to see what best and how much could be taught in a law school to fit the student for this ideal. The law school, he says, has two tasks before it:—

(1) to equip students with knowledge of a large enough body of law to serve as an orientation and starting point for learning the additional law they will need from day to day in practice;

(2) to habituate them to dealing with the application of law and with gaps where no legal rule exists.

The case system of instruction has some advantages but in the limited period of the college course it is not possible to take to it. There are *essential* subjects and *"elective"* or optional subjects to be taught in the college. What are essential and what are not depends largely on the needs of society at the time. The Professor gives an instructive table to make this point showing the degree of prominence attached to the different subjects during the times of Blackstone and Kent and in Pennsylvania itself during 1871, 1874 and 1930.

	Blackstone.	Kent	U. of Penn. 1871	U. of Penn. 1874	U. of Penn. 1930
Private Law.	p.c.	p.c.	p.c.	p.c.	p.c.
Property Law (Total)	33.3	33.9	20.6	20.3	21.0
Real Property	24.0	22.2	16.6	12.5	10.5
Personal Property	1.8	2.5	4.2	4.7	2.6
Wills & Succession	4.5	5.4	..	3.1	2.6
Mortgages	0.26	2.7	..	..	..
Trusts	0.1	1.1	..	..	..
Contract Branches (Total)	2.6	14.8	2.7	25.0	23.9
Contracts	..	1.1	..	3.1	8.0
Sales	..	3.7	..	3.1	5.3
Negotiable Instruments	..	2.5	..	3.1	5.3
Agency	..	1.5	..	1.6	5.3
Bailments	..	2.6	..	1.6	..
Suretyship	..	0.0	..	6.2	..
Insurance	..	0.5	..	4.7	..
Partnership	..	2.1	..	1.6	..
Bankruptcy	..	0.8	..	0.0	..
Maritime Law	0.0	11.5	..	0.0	..
Torts	0.4	0.4	0.0	0.0	8.0
Persons	2.7	8.5	4.2	3.1	2.6
Corporations	0.9	2.1	0.0	1.6	5.3
Equity and Equity Procedure	1.5	0.0	25.0	18.7	8.0
Criminal Law	21.4	0.0	2.7	3.1	5.3
Conflict of Laws	0.0	0.0	2.7	3.1	5.3
Procedure, Pleading and Practice (including evidence)	14.2	0.0	25.0	18.7	15.8

	Black-stone.	Kent	U. of Penn. 1871	U. of Penn. 1874	U. of Penn. 1930
Private Law—(contd.)	p.c.	p.c.	p.c.	p.c.	p.c.
Public Law (Total)	25.8	28.1	16.7	6.2	5.3
Constitutional Law	16.7	13.2	4.2	3.1	5.3
International Law	0.0	10.5	4.2	3.1	..
Jurisprudence	9.1	4.4	8.3	0.0	..

The writer points out towards the end that with the rise in importance of new branches of law in fields like corporations, taxation, public utilities and administrative law, some of these subjects must be taught in a law school as essential subjects along with contracts, torts, evidence, procedure, wills, trusts, etc. The attempt of the University must be to try and compress the time necessary for the other subjects without in the least degree affecting efficiency in the training so that it may thrust in these subjects.

The writer refutes the attempt on the part of some reformers to classify law in accordance with human activity like "Law of business," "Family Law," "Criminal Law and Criminology." But as the Professor points out several subjects will get into every branch of this classification and will tend to reduplication rather than compression. The better course will be to take up the abstract juristic classification and in dealing with any general rule to point out any slight variations that may be in their application to different branches of law. The task of the law student is not research. He has hardly time for it and however much it may be useful to have treatises on individual subjects like Banking, Real Estate Practice and so on, the concern of the student is primarily with legal categories; and their action on social or economic facts must be brought before him in the course of directing his attention to the former.

The distinction between possession and custody is very thin indeed and it is not easy to define when exactly a servant can be said to be in possession of his employer's effects. This distinction becomes very material in the Criminal Law. The note to *R.* v. *Harding,* (1929) 46 T.L.R. 105: 21 Cr.A.R. 166 in the *Law Quarterly Review* for April, 1930, points out that the decision will not be regretted, but that the basis of the decision is shaky. In *R.* v. *Harding,* the Court of Criminal Appeal held that when *A* broke into a house and forced a maid-servant, the only person then in the house, the master being in the garden, to give him her master's coat, *A* robbed the maid-servant of the coat. The case

in *R.* v. *Deakin and Smith* was relied on. The note points out that the Judges only referred to the short summary of it in 2 East's Pleas of the Crown at p. 653 and that the fuller report of it in 2 Leach 862 shows that the very case on hand of a servant living in the house was put before them and distinguished. *Deakin's case* went off more on the argument of *ab inconvenienti* and whatever may be said of the case "where the servant's charge is to be executed at a distance from the master and where the manner of the execution is necessarily left in a great degree to the discretion of the servant," the note thinks that it cannot apply to the present case where the coat was not specially entrusted to her and the master was within call.

"Crime is an organized business, in many respects the best and most highly organized business of the day. These modern criminal gangs plan their crimes weeks in advance, fixing the day and the hour and the place. They locate their high-powered automobiles on different sides of the spot or place where the crime is to be committed, their sentries engaging the attention of the policemen on duty; their trigger men, as they are called, do the shooting if necessary. They have their lawyers employed in advance if they happen to be caught, surety companies arranged with to provide bail bonds for them if arrested and arraigned in court—all of this done beforehand—their *alibis* arranged so that if apprehended they can prove themselves to have been somewhere else at the time of the commission of the crime."

This is the statement made by Hon. William McAdoo, Chief Magistrate of New York City, before the Baumes Committee of the New York Legislature and quoted by Mr. Martin Conboy in his article "Organized Crime as a Business" contributed to the *New York Law Quarterly Review.* The writer describes several instances where the commission of the crime was all pre-arranged and even methods of escape pre-conceived. There seem to be cases where even the plea of *alibi* were arranged for in the event of apprehension. The individual crimes due to individual's passions are stated to be only 30 per cent. while the crimes organised for profit are 70 per cent. and of this the individual crimes are all efficiently apprehended and handled but only a small percentage of the major criminal is apprehended and even when apprehended, a good percentage of them escape. The writer says that the defect is in the law "which concentrates attention upon the individual charged with crime, and deals with him, when apprehended, as a free citizen, rather

than as a soldier in an army by which society is continuously and systematically despoiled." The writer examines the reasons for the growth of the organisation but whatever they may be, it is necessary that means should be found to combat those organisations by bringing to book the ringleaders of the organisations, who work behind the screens. The actual doer of the crime is often an insignificant person who does not mind much whether he is within or without the prison. It cannot be denied that if, as the writer appeals to, the people wanted the crime business to be ended and co-operated it could at least be reduced in quantity though not wholly eradicated.

BOOK REVIEWS.

TRIAL OF MOTOR CAR ACCIDENT CASES, by Andrew Dewar Gibb. Published by Messrs. Sweet and Maxwell, Ltd., 1930. Price 20*s*. net.

Taking into consideration the increasing number of motor cars and the fairly good number of daily accidents in congested cities, we cannot adequately estimate the value of a book of this kind, which reduces the conduct of the trial of a running-down action to an exact formula enabling thereby the advocate to ask the right question at the proper time. The sensible and relevant questions that ought to be put in a motor accident case appear in the margin while the body of the book comments on the questions, containing at the same time the law, laid down in propositions or rules and followed by pertinent illustrations and references to decisions of courts. Though this book happens to be an adaptation of an American original, the attempt to introduce English and Scottish cases while retaining American decisions makes it worth studying.

The author has to be congratulated on being almost the first in the field with a work on such a novel and attractive subject.

THE MERCANTILE LAW OF INDIA SERIES:—THE NEGOTIABLE INSTRUMENTS ACT, by T. Ramachandra Rao, B.A., B.L., Advocate, Madras. Price Rs. 8.

This is the first of a series in which Mr. T. Ramachandra Rao proposes to give a comprehensive statement of the Mercantile Law of India in all its aspects. It is the first of its kind. It is designed on the lines of Smith's Mercantile Law. As pointed out by Mr. Justice Venkatasubba Rao in the valuable Foreword contributed by him a book of this kind is a real desideratum for

the reason that while books dealing exclusively with each of the topics comprised must treat the subject in isolation from the rest of the subjects a book of this kind "endeavours to consider the various allied subjects in their entirety and has advertence to their mutual-bearings." It is useful to the lawyer. To the business-man it is indispensable. It will keep the latter from many a pitfall and, wisely handled, may even dispense with the necessity for his resorting for most of his ordinary business to the lawyer.

The besetting sin of the ordinary run of law books in this country is formlessness and want of clear thought. Most of them are mere digests without the least idea as to arrangement or consistency. Not infrequently, two statements are found in close contiguity without any attempt at explanation. Mr. Ramachandra Rao's book, we are glad to note, is entirely free from this charge. Without going into needless details, but at the same time omitting nothing which need be known, Mr. Ramachandra Rao has carefully arranged his material and, so far as we have been able to examine, has accurately and lucidly stated the law. It is not a bare statement of the law unaccompanied by the discussion of the principle underlying. It is a refreshing combination of both and we have no doubt that the series will be popular with the student, the lawyer and the businessman alike. The usefulness of the book is enhanced by the printing in the Appendix of all the various enactments that bear on the topics discussed—the Law of Negotiable Instruments. The selection is not confined to the Negotiable Instruments Act but includes others, the English Bills of Exchange Act and portions of the Limitation Act, Stamp Act, the Usurious Loans Act, Indian Evidence Act, the Bankers' Book Evidence Act and the Civil Procedure Code.

THE SALE OF GOODS ACT, by Messrs. P. Ramanatha Aiyar and N. S. Ranganadha Aiyar. Published by The University Book Agency, Kutcheri Road, Lahore. Price Rs. 5.

With their usual habit for elaboration with a wealth of details of any subject they happen to choose, the authors have given their best attention to the Sale of Goods Act. Every section has its full explanations and illustrations following it, and there can be no want felt by the student when relevant passages from the decisions of English Judges find themselves transported verbatim in these pages. The history of the Act from the time when it was a bill up to its final stage of appearing on the Statute Book has been traced in the first few pages to keep

the reader aware of the scope and the purpose of the Act. We had rarely doubted the capacity of the authors to hunt for quotations and passages from various text-books and leading cases on the subject, and the expectations are more than fulfilled when they have arranged them in the proper way with almost word for word annotation of the sections.

INDIAN POLICE ACTS, by M. K. A. Khan, K.S., M.A., LL.M., Advocate, Lahore.

This book treats of the Indian Police Acts (V of 1861), (III of 1888) and (XXII of 1922), providing us with a good deal of analytical notes under every section along with the case-law bearing upon the subject. The noteworthy feature of this attempt to write an elaborate commentary is that the analogous law as found in the various local Acts of the presidencies is given side by side with the main Act.

We are quite appreciative of the merits of this book.

THE INDIAN SALE OF GOODS ACT, by A. Ramayya, Pleader, Madura, 1930. Price Rs. 3-8-0.

The passing of the Indian Sale of Goods Act has set many a diligent student of that branch of the law to write full commentaries, bringing out the almost entire modelling of that Act on the English Sale of Goods Act of 1893. The Report of the Special Committee itself can give any one the idea, how much of real endeavour was directed by the framers of the Act, to bring the present law of Sale of Goods in conformity with the English Law, especially in view of the great convenience which would be effected if there was a uniformity of law in the various countries, particularly those having trade dealings with one another.

The author of this book has not stinted in his efforts to provide the readers with all the necessary information regarding the scope of the present Act and the purpose for the adoption of the English Law. By the timely references to the English cases, many of which had much share in the formation and growth of the English Law itself, the book abounds in the leading and important decisions under the relevant sections. The kernel of some of the judgments of the English Judges, in the language of either the original or the author, finds a place in the notes and we feel no doubt that the attempts of the author also to add his own explanations to the sections in a succinct and

clear manner, will aid the readers to get a sufficient understanding of the subject.

AN EPITOME OF THE LAW OF ADOPTION AS ADMINISTERED IN BRITISH INDIA, by M. P. Tandon, B.LIT.SC., Lawyer, Allahabad. Price Rs. 1-2-0.

This very tiny volume gives a concise account of the principles of adoption as developed by case-law in the various High Courts of India. Not being a treatise on the subject, it deals only with the broad outlines of the law of adoption. Moreover the case-law given here can give no greater aid to lawyers than digests of cases which are daily adding to their own numbers. Perhaps students of colleges who are eager to avail themselves of brief notes on that branch of the Hindu Law may feel it worth while to find in it their desideratum.

THE INDIAN SALE OF GOODS ACT, by V. V. Chari, B.A., B.L.

This is again a good attempt at elucidating the principles underlying the sections of the new Act, with all the necessary care and discretion bestowed on the selection of the important decisions which had moulded the law on the subject as administered in England. For an analytical comparison of the sections with those of the English Sale of Goods Act and the Indian Contract Act, we need not seek here in vain. Though concise of form, the contents will, we are sure, satisfy the curiosity of the readers to probe into the changes and improvements on that branch of the law brought into existence by the passing of this Act.

THE INDIAN EVIDENCE ACT, by K. Jagadisa Aiyar, B.A., M.R.P.A. (Lond.). Compiled at the Madras Criminal Cases Office, Madras. Price Re. 1.

In order to satisfy the demands of the members of the Bar for a handy edition of the Act, the author has brought forward this book after having taken the pains to add to it a short summary of the sections along with a brief introduction explaining the importance of the Act itself. The compiler has incorporated all the amendments to the Act up to the year 1930.

THE CODE OF CIVIL PROCEDURE with a full and exhaustive commentary, by Dhirendranath Guha, M.A., B.L., of the Bengal Civil Service (Judicial). Part I. Printed at the Standard Law Book Society, Calcutta. Price Rs. 2.

This is the first part of an exhaustive commentary of the Code planned out by the author. The first three sections of the Code are the subject-matter of this volume and the notes and references are copious and complete. Of course, considering the number of issues, of the size of this part that will be required to make up the whole, we are led to infer that the work, when finished, will be immense.

INDIAN SALE OF GOODS ACT, by S. R. Dongerkery, B.A., LL.B., Attorney-at-Law, Bombay. Published by Messrs. Butterworth & Co. (India), Ltd., 1930. Price Rs. 5.

This is a short and neat commentary on the Indian Sale of Goods Act, 1930. It is modelled on the lines of Chalmer's book on the English Sale of Goods Act. The author has taken great pains to compress in as short a compass as possible the effect of the leading decisions on each section. The result is that the notes are clear and accurate, so far as they go, it cannot be said that the book deals exhaustively with either the case-law on the subject, English or Indian, or with the various difficulties of interpretation experienced by English Judges, especially as regards the applicability of the several sections to C.I.F. sales. To give an illustration, in dealing with the question of the measure of damages in the case of an "anticipatory breach of contract" under section 60, the vexed questions as to the buyer's duty or right to go into the market as against a defaulting seller, whether the duty arises only when it is reasonably necessary to protect the interest of the defaulting seller, or whether it is an absolute right of the buyer, how the damages are to be calculated when the action comes on for trial before the day of performance arrives (*cf. Millett* v. *Van Heek*, (1920) 3 K.B. 535 and on appeal (1921) 2 K.B. 369; *Melachrino* v. *Nickoll and Knight*, (1920) 1 K.B. 693) and all these are not discussed in detail.

But all this is merely incidental to the compression which the author has aimed at and does not detract from the value of this commentary as a useful addition to the literature on the subject both to the student as well as to the practitioner, bringing as it does in a handy form in clear and precise language, a vast amount of information on a growing branch of law.